

AMENDED IN ASSEMBLY JUNE 23, 2009

AMENDED IN SENATE APRIL 21, 2009

SENATE BILL

No. 629

Introduced by Senator Liu

February 27, 2009

An act to add Section 3260.3 to the Civil Code, relating to works of improvement.

LEGISLATIVE COUNSEL'S DIGEST

SB 629, as amended, Liu. Private works of improvement: retention proceeds.

Existing law generally regulates the terms and conditions of contracts for private works of improvement. Existing law requires that, within 45 days after the date of completion, as defined, retention proceeds withheld from any payment by the owner to the original contractor, or by the original contractor to any subcontractor, be released, except as specified. Existing law provides that, if a bona fide dispute exists between an original contractor and a subcontractor, the original contractor may withhold from the retention payment up to 150% of the disputed amount.

This bill, applicable to contracts entered into on or after January 1, 2010, would prohibit retention proceeds withheld from any payment made by the owner to the original contractor from exceeding 5% of the amount of the payment otherwise due under the contract. The bill would prohibit the percentage of the retention proceeds withheld from any payment made by the original contractor to any subcontractor, or by a subcontractor to another subcontractor, from exceeding 5% of the amount of the payment otherwise due under the contract, or the percentage of each payment that may be withheld under the contract

between the owner and the original contractor, whichever is less. ~~It would require that any retention proceeds withheld pursuant to these provisions be deposited in an interest-bearing escrow account and would provide for payment of that interest, upon release of the retention proceeds, to the contractor or subcontractor to whom the proceeds were released. The bill would require that, with respect to a contract between an original contractor and a subcontractor, or between two subcontractors, any retention proceeds withheld, together with accrued interest, be released within 45 days after the date that all line items listed separately in any schedule of values that forms a part of the applicable contract were completed, or the date that the original contractor or subcontractor, as applicable, accepted the work for those line items. This bill would require that with respect to a contract between an owner and an original contractor, between an original contractor and a subcontractor, or between 2 subcontractors, any retention proceeds withheld shall be released within 45 days after the party seeking payment serves a fully executed conditional waiver and release, as provided. The bill would provide that it does not prohibit the withholding of funds pursuant to the above provisions of law governing amounts in dispute. This bill would also provide that these provisions shall not apply if the owner or original contractor provides written notice to the original contractor or subcontractor, prior to or at the time that the bid is requested, that performance and payment bonds may be required.~~

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 3260.3 is added to the Civil Code, to
- 2 read:
- 3 3260.3. (a) This section is applicable with respect to all
- 4 contracts entered into on or after January 1, 2010, between an
- 5 owner and an original contractor, between an original contractor
- 6 and a subcontractor, and between two subcontractors, relating to
- 7 the construction of any private work of improvement.
- 8 (b) Except as otherwise provided in Section 3260, the following
- 9 provisions apply:

1 (1) Retention proceeds withheld from any payment made by
2 the owner to the original contractor shall not exceed 5 percent of
3 the amount of the payment otherwise due under the contract.

4 (2) Retention proceeds withheld from any payment made by
5 the original contractor to any subcontractor, or by a subcontractor
6 to another subcontractor, shall not exceed 5 percent of the amount
7 of the payment otherwise due under the contract, or the percentage
8 of each payment that may be withheld under the contract between
9 the owner and the original contractor, whichever is less.

10 (3) In no event shall the total amount of retention proceeds
11 withheld under all payments made under the contract exceed 5
12 percent of the total contract price.

13 ~~(e) Any retention proceeds withheld pursuant to this section~~
14 ~~shall be deposited in an interest-bearing escrow account. Upon the~~
15 ~~release of any retention proceeds, the contractor or subcontractor~~
16 ~~to whom the proceeds were released shall be entitled to any interest~~
17 ~~earned in the escrow account.~~

18 ~~(d) Notwithstanding any other provision of law, with respect to~~
19 ~~a contract between an original contractor and a subcontractor, or~~
20 ~~between two subcontractors, any retention proceeds withheld~~
21 ~~pursuant to this section, together with accrued interest, shall be~~
22 ~~released within 45 days after the date that all line items listed~~
23 ~~separately in any schedule of values that forms a part of the~~
24 ~~applicable contract were completed, as determined by the original~~
25 ~~contractor or subcontractor for whom the work was performed, or~~
26 ~~the date that the original contractor or subcontractor, as applicable,~~
27 ~~accepted the work for those line items.~~

28 *(c) Notwithstanding any other provision or law, with respect to*
29 *a contract between an owner and an original contractor, between*
30 *an original contractor and a subcontractor, or between two*
31 *subcontractors, any retention proceeds withheld pursuant to this*
32 *section by the owner, original contractor, or subcontractor shall*
33 *be released within 45 days after the date the party seeking payment*
34 *of retained amounts serves to the hiring party a fully executed*
35 *form entitled "Conditional Waiver and Release Upon Final*
36 *Payment" as set forth in paragraph (3) of subdivision (d) of Section*
37 *3262. Notwithstanding any other provision of law, the party seeking*
38 *payment of the retained amounts may not serve the form upon the*
39 *hiring party until the party seeking payment of the retained*

1 *amounts has completed the scope of work in its contract with the*
2 *hiring party.*

3 ~~(e)~~

4 *(d) It shall be against public policy for any party to require any*
5 *other party to waive any provision of this section.*

6 ~~(f)~~

7 *(e) This section does not prohibit the withholding of funds*
8 *pursuant to subdivisions (e) and (f) of Section 3260 in the event*
9 *of a dispute. This section does not prohibit the withholding of funds*
10 *pursuant to subdivision (i) of Section 3260.*

11 *(f) This section shall not apply if the owner or original*
12 *contractor provides written notice to the original contractor or*
13 *subcontractor, prior to or at the time that the bid is requested, that*
14 *performance and payment bonds may be required and the original*
15 *contractor or subcontractor subsequently is unable or refuses to*
16 *provide to the owner or original contractor a performance and*
17 *payment bond issued by an admitted surety insurer. If the expense*
18 *of the bond or bonds required under this section is to be borne by*
19 *the original contractor or subcontractor, the requirement shall be*
20 *specified in the written or published request for bids.*